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SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
08/460,715	06/02/95	MACH	M 5552.0738-02

18M1/0121

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EXAMINER	
LEE, D	
ART UNIT	PAPER NUMBER
1815	

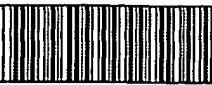
DATE MAILED: 01/21/98

**Please find below a communication from the EXAMINER in charge of this application.**

Commissioner of Patents

## Office Action Summary

Application No. <b>08/460,715</b>	Applicant(s) <b>Mach et al</b>
Examiner <b>Danny Lee</b>	Group Art Unit <b>1815</b>



Responsive to communication(s) filed on 6/2/95, 9/14/95, 3/29/96, 8/26/96, 8/28/96, 10/14/97

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle* 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 1 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

### Disposition of Claim

Claim(s) 5, 7, 8, 17, and 18 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) \_\_\_\_\_ is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claims 5, 7, 8, 17, and 18 are subject to restriction or election requirement.

### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

### Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

***Election/Restriction***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

Group I. Claims 7-8, drawn to immunogenic protein and method of making, classified in Class 424, subclass 230.1.

Group II. Claims 5, 17-18, drawn to nucleic acids and host cells, classified in Class 536, subclass 23.72.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions of Group I and Group II are directed to products which differ in their physical, chemical, and immunological properties such as primary sequence and chemical composition and are unobvious in view of each other.

3. Inventions Group I and Group II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention of Group I has separate utility such as immunizing an animal to make monoclonal antibodies or for use in a diagnostic assay.

4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R. § 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 C.F.R. § 1.48(b) and by the fee required under 37 C.F.R. § 1.17(h).

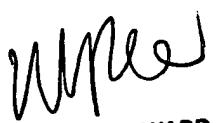
Papers relating to this application may be submitted to Group 1800 by facsimile transmission. Papers should be faxed to Group 1800 located in Crystal Mall 1. The Fax number for Art Unit 1815 is (703) 305-3014. All Group 1800 Fax machines will be available to receive transmissions 24 hrs/day, 7 days/wk. Please note that the faxing of such papers must conform with the Notice published in the Official Gazette, 1096 OG 30, (November 15, 1989).

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to **Danny Lee** whose telephone number is **(703) 305-7245**. The Examiner can normally be reached on Monday-Friday from 8:00 AM-4:30 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, **Marian Knodel**, can be reached at **(703) 308-4311**.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Danny Lee  
January 19, 1998

  
MICHAEL P. WOODWARD  
PRIMARY EXAMINER  
GROUP 1800